

Exhibit 5

Lawsuit accuses drug makers of conspiring to hike insulin prices

 [cbsnews.com/news/insulin-price-hike-lawsuit-accuses-drug-makers-of-conspiring](https://www.cbsnews.com/news/insulin-price-hike-lawsuit-accuses-drug-makers-of-conspiring)

More than 29 million Americans live with diabetes, and for some six million of them, insulin is a life or death medication.

Between 2002 and 2013, the price of insulin more than tripled, to more than \$700 per patient. A federal lawsuit accuses the three insulin manufacturers of conspiring to raise their prices. The drug makers deny the allegations.

Those high prices, combined with rising insurance deductibles, mean many people who rely on insulin are feeling sticker shock. Even doctors say without a way to pay, some patients are left facing impossible choices, reports CBS News correspondent Anna Werner.

A cell phone video shows Dr. Claresa Levetan talking to her patient Shawna Thompson back in the hospital because she couldn't pay for her insulin.

"One vial of insulin costs how much for you?" Levetan asked.

"One hundred and seventy-eight dollars," Thompson responded.

It was the fourth time in just over a year that Thompson had to be treated for a life-threatening diabetic coma.

"Patients come in and say I can't afford to take it, so I'm not," Levetan said. She said it's common for her now to hand out free drug company samples of insulin, just so patients can stay on their lifesaving medication.

"Patients are begging for samples because they can't afford the insulin," Levetan said.

"Not asking, you're saying, begging," Werner said.

"Begging," Levetan said.

Like 74-year-old Kathleen Washington. Some months, her insulin runs over \$300 a month – more than she can afford.

"I must pay my mortgage," Washington said.

If it's a choice between the mortgage and the insulin, "It's going to be the mortgage," she said.

Investment research firm SSR Health analyzed insulin list prices from 2012 to 2016 for the three companies that manufacture it, and found prices went up between 99 and 120 percent.

In a separate analysis, SSR Health's Richard Evans also found a striking pattern: the prices of two prime insulin drugs rose in lockstep – mirroring each other – 12 times between 2008 and 2014.



"The two companies took price increases within days of one another, and the price increases were similar – even identical – to the percentage point," Evans said.

"If you raise your price, and I raise my price to the same level, what am I saying to you as a company?" Werner asked.

"Let's keep going, or, I'm not going to fight you," Evans said.

Vermont Sen. Bernie Sanders is calling for a federal investigation, alleging collusion among the three drug companies: Eli Lilly, Novo Nordisk and Sanofi.

"Just coincidentally it happens that the three major suppliers of insulin seem to be raising their prices at the same exact time, at the same level. So I think you have to be very naïve not to believe there is collusion," Sanders said.

The companies deny they've broken any laws. Sanofi told CBS News there is "strong competition" on price. Eli Lilly said it is "aggressively competing on net (or negotiated) price," and Novo Nordisk's president said on the company's website that increasing list prices is designed to offset rebates and price concessions to maintain profitability.

Lori Reilly, with the trade group that represents U.S. pharmaceutical manufacturers, told CBS News, “I don’t believe there’s been collusion by our companies.”

She pointed out although the drug companies list prices are up, the negotiated prices for insulin, what the industry calls “net” prices, have gone up just 2 to 3 percent overall. She said that’s because intermediaries called pharmacy benefit managers, or PBMs, negotiate for rebates from drug companies, take a fee, then pass those lower “net” prices on to insurance companies and ultimately consumers.

The problem, Evans said, is patients who have high deductibles or little or no insurance don’t get those discounted prices.

“So in other words, the people who can least afford these increases are the ones who get hit by them,” Werner said.

“Everybody gets hit by them a little bit, but people that can’t afford it get hit disproportionately,” Evans said.

But Reilly said, “When you look at the evidence, the competitive marketplace is working, and it’s working very aggressively to help keep drug cost increases in check.”

“I’m listening to that statement and I’m hearing consumers go, ‘Are you kidding me?’” Werner said.

“There is an issue for many patients who today face increasing deductibles,” Reilly said. “If those patients are coming to the pharmacy counter and they’re paying full list price, while their insurance company or pharmacy benefit manager has bought that drug at a 50 or 60 percent discount, that is a problem.”

The country’s largest pharmacy benefit manager told CBS News drug makers are the ones raising their prices. But experts tell us there’s plenty of blame to go around. Meanwhile, all three insulin manufacturers say they’ve announced new initiatives to make insulin more affordable.

Novo Nordisk responds:

Many Americans struggle to pay for our medicines and we are focused on working collaboratively toward sustainable solutions.

On Massachusetts class action lawsuit:

“We are aware of the complaint and its characterization of the pharmaceutical supply chain. We disagree with the allegations made against the company, and are prepared to vigorously defend the company in this matter. At Novo Nordisk, we have a longstanding commitment to

supporting patients' access to our medicines. Since this is an ongoing litigation, we can't comment further."

On shadow pricing allegations:

"Under the system that has evolved here in America, the actual price received by a manufacturer is not the list price or the Average Wholesale Price, but rather the net price after very competitive negotiations with a number of middlemen who operate between those of us who make insulin and the patients who use our medicines to control their diabetes."

On Sen. Sanders' collusion allegations:

"Novo Nordisk is committed to developing innovative medicines for patients with diabetes. We set price for these life-saving medicines independently and then negotiate with payers and PBMs to ensure patients have access to them. We stand by our business practices and our efforts to improve the lives of patients with diabetes."

Eli Lilly responds:

"Today's health care system works well for many people, but those enrolled in high-deductible insurance plans and managing chronic conditions face challenges in gaining reasonable access to the treatments they need. Diabetes is one example, and we are committed to doing our part."

"Lilly recently announced an innovative program to provide insulin at a discounted price. Starting January 1, people who pay the highest out-of-pocket prices for insulin, including those who have no insurance or are in the deductible phase of their high-deductible insurance plans, may directly benefit from a 40 percent discount via mobile and web platforms hosted by Blink Health."

"We also intend to work with health plans on innovative approaches so patients can directly benefit from negotiated discounts during the deductible phase."

On Massachusetts class action lawsuit:

"Lilly disagrees with the allegations reported to be in the lawsuit. We conduct business in a manner that ensures compliance with all applicable laws, and we adhere to the highest ethical standards."

On shadow pricing allegations:

"We are in strict compliance with all federal regulation and guidelines on all aspects of our business, including drug pricing, and we are committed to providing the best medicines to people with diabetes at the best price available."

“The pharmaceutical industry is very competitive, and just like in other competitive industries, we monitor publicly available data to understand what other companies are doing. Sometimes, that means adjusting our prices, which helps our insulins remain available on formularies for people with diabetes. We make price adjustments after considering multiple factors, including the list prices of other treatments in the market. Importantly, list prices are a starting point, so they are not an adequate measure of competition. Net realized prices – after negotiations on rebates and fees, and other costs are factored in – are the real measurement of competition. We are aggressively competing on net price. For instance, while the list price for Humalog® has gone up, Lilly actually receives a lower average net price now than in 2009.”

On Sen. Sanders’ collusion allegations:

“Lilly denies the accusation. Lilly conducts business in a manner to ensure compliance with all applicable laws, and we adhere to the highest ethical standards.”

Sanofi responds:

“Sanofi fully understands that the price and affordability of our products is important for patients, and we are committed to helping patients get the treatment they are prescribed. We offer patient assistance programs for patients in need and copay programs for qualified patients whose prescriptions are not paid in part or fully by any state or federally funded program.

“Our goal is to help patients remain on their current treatment and not have to change treatments just because of changes in their coverage. To help with this, we have recently introduced a new copay offer for eligible patients to pay no more than \$10 per prescription for either Lantus or Toujeo for up to 12 months regardless of insurance coverage.

“The new copay offer helps patients on traditional commercial insurance including those on high-deductible plans as well as those who pay cash. More specifically:

- Patients who pay cash and use the copay card receive \$100 off Lantus SoloStar or vial box which is a 27-40% discount, or for Toujeo, they receive \$200 off per box which is a 60% discount.
- Patients on high-deductible plans who use the co-pay card or evoucher, which will automatically activate at participating pharmacies when their out of pocket costs are above a certain cost level, pay no more than \$10 per prescription.”

On Massachusetts class action lawsuit:

“We strongly believe these allegations have no merit, and will defend against these claims. Since this is related to pending litigation, it would be inappropriate to comment further,” said Ashleigh Koss, Sanofi Head of Media Relations, North America.

On shadow pricing allegations:

“Sanofi operates with the highest ethical business standards and complies with all laws and regulations that govern our business. There is strong competition in the marketplace that also factors into how we set the prices of our treatments. Sanofi fully understands that the price and affordability of our products is important for patients. We have not increased the list price of Lantus since November 2014. In fact, the net price of Lantus over the cumulative period of the last five years has decreased because of efforts to remain included on formularies at a favorable tier which helps to reduce out of pocket costs to patients. In setting prices for our insulin medications, we work to balance helping patients manage their diabetes today and developing ways to improve care in the future. We also offer assistance programs for patients in need.”

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Express Scripts (PBM) responds:

“While drug companies have increased the price of insulin, the net costs to payers have been held down. That’s because PBMs like us are doing our job in delivering savings to our clients – the employers, health plans and government entities that pay the most for medicines in this country. Rebates are delivered to those entities and they are used to help bring down benefit premiums and also to ensure a robust pharmacy benefit is provided to workers and families. It is the payers’ decision on how they want to return those rebates to their members. For example, we can, and do at the direction of our clients, provide point of sale rebates directly to a plan member. Most plans would rather receive the rebates and deploy them as they see fit to lower premiums and enhance the benefit.

The main takeaway is this: Rebates don’t raise drug prices, drug makers raise drug prices.

Also, a few other notes about rebates:

- CMS’ recent fact sheet noted rebates (as DIR) reduced Part D spending \$411 per beneficiary in 2015.

- In 2014, Medicaid spent \$42 billion on Rx, but received \$20 billion in rebates.
- Without rebates, how will these public programs afford prescription drugs?"

Sen. Bernie Sanders weighs in:

On Facebook: "Americans pay by far the highest prices for prescription drugs in the world. During the campaign Mr. Trump said that he would take on bigPharma and lower the cost of drugs. Today, he met with executives from the pharmaceutical industry — an industry where the top 5 companies made \$50 billion in profits in 2015. Funny thing though. He talked about tax breaks for this tremendously profitable industry, but what he did not talk about was his campaign promise to allow Medicare the ability to negotiate prices with the drug companies. It appears Trump has already sold out the American people regarding his promise not to cut Social Security, Medicare and Medicaid. Is he going to sell them out again and cave to the drug companies as well?

"Meanwhile, I and colleagues will be introducing legislation to significantly lower prescription drug prices in this country, allowing our people to purchase low-cost prescription drugs from abroad and having Medicare negotiate prices with drug companies. Will Trump support this legislation and lower drug prices? Stay tuned."

On working with the president: "I look forward to working with President Trump on this issue if he is serious about standing up to the pharmaceutical industry and reducing drug prices."